

**TOWN OF CASTLE ROCK
CONSTRUCTION CONTRACT
(2023 Asphalt Overlay Project)**

THIS CONSTRUCTION CONTRACT ("Contract") is made between the **TOWN OF CASTLE ROCK**, a Colorado municipal corporation ("Town"), 100 N. Wilcox Street, Castle Rock, Colorado 80104 and **SCHMIDT CONSTRUCTION COMPANY**, a Colorado corporation, 2635 Delta Drive, Colorado Springs, Colorado 80910 ("Contractor").

In consideration of these mutual covenants and conditions, the Town and Contractor agree as follows:

SCOPE OF WORK The Contractor shall execute the entire Work described in the Contract.

CONTRACT The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, written or oral representations and agreements. The Contract incorporates the following Contract Documents. In resolving inconsistencies among two or more of the Contract Documents, precedence will be given in the same order as enumerated.

LIST OF CONTRACT DOCUMENTS

The Contract Documents, except for Modifications issued after execution of this Contract, are:

1. Change Orders
2. Notice to Proceed
3. Construction Contract
4. General Conditions
5. Where applicable, Davis-Bacon Act Wage Determinations
6. The following Addenda, if any:

2023 Facilities – 1 Addendum

7. Special Conditions of the Contract:
 - a. ProjSec105 No open excavation
 - b. ProjSec107 Public Notification
 - c. ProjSec202 Temporary Pavement Marking
 - d. ProjSec627 Pavement Marking
 - e. ProjSec627 Preformed Thermoplastic
8. Notice of Award;
9. Invitation to Bid;
10. Information and Instructions to Bidders;
11. Notice of Substantial Completion;
12. Notice of Construction Completion;
13. Proposal Forms, including Bid Schedules;

14. Performance, and Labor and Material Payment Bonds;
15. Performance Guarantee; and
16. Insurance Certificates.

CONTRACT PRICE. The Town shall pay the Contractor for performing the Work and the completion of the Project according to the Contract, subject to Change Orders as approved in writing by the Town, under the guidelines in the General Conditions. The Town will pay **\$7,255,348.00** ("Contract Price"), to the Contractor, subject to full and satisfactory performance of the terms and conditions of the Contract. The Contract Price is provisional based on the quantities contained in the Bid attached as *Exhibit 1*. The final Contract Price shall be adjusted to reflect actual quantities incorporated into the Work at the specified unit prices. The Town has appropriated money equal or in excess of the Contract Price for this work.

TERM. The term shall commence upon execution of the Contract and terminate on December 31, 2023, unless an extension of the Contract is agreed to in writing by the Town and the Contractor.

COMPLETION OF WORK. The Contractor must begin work covered by the Contract within **3** working days from the date of the Notice to Proceed, and must complete work within **160** working days from and including the date of Notice to Proceed, according to the General Conditions, or by November 3, 2023, whichever date is earlier.

LIQUIDATED DAMAGES. If the Contractor fails to complete the Work by the date set for completion in the Contract, or if the completion date is extended by a Change Order, by the date set in the Change Order, the Town may permit the Contractor to proceed, and in such case, may deduct the sum of **\$2,400.00** for each day that the Work shall remain uncompleted from monies due or that may become due the Contractor. This sum is not a penalty but is a reasonable estimate of liquidated damages.

The parties agree that, under all of the circumstances, the daily basis and the amount set for liquidated damages is a reasonable and equitable estimate of all the Town's actual damages for delay. The Town expends additional personnel effort in administering the Contract or portions of the Work that are not completed on time, and has the cost of field and office engineering, inspecting, and interest on financing and such efforts and the costs thereof are impossible to accurately compute. In addition, some, if not all, citizens of Castle Rock incur personal inconvenience and lose confidence in their government as a result of public projects or parts of them not being completed on time, and the impact and damages, certainly serious in monetary as well as other terms are impossible to measure.

SERVICE OF NOTICES. Notices to the Town are given if sent by registered or certified mail, postage prepaid, to the following address:

TOWN OF CASTLE ROCK
Town Attorney
100 N. Wilcox Street
Castle Rock, CO 80104

With a copy to: Legal@crgov.com

INSURANCE PROVISIONS. The Contractor must not begin any work until the Contractor obtains, at the Contractor's own expense, all required insurance as specified in the General Conditions. Such insurance must have the approval of the Town of Castle Rock as to limits, form and amount. *Certificate of Insurance ("COI") must be submitted along with the executed contract as Exhibit 2.*

RESPONSIBILITY FOR DAMAGE CLAIMS. The Contractor shall indemnify, save harmless, and defend the Town, its officers and employees, from and in all suits, actions or claims of any character brought because of: any injuries or damage received or sustained by any person, persons or property because of operations for the Town under the Contract; including but not limited to claims or amounts recovered from any infringements of patent, trademark, or copyright; or pollution or environmental liability. The Town may retain so much of the money due the Contractor under the Contract, as the Town considers necessary for such purpose. If no money is due, the Contractor's Surety may be held until such suits, actions, claims for injuries or damages have been settled. Money due the Contractor will not be withheld when the Contractor produces satisfactory evidence that the Contractor and the Town are adequately protected by public liability and property damage insurance.

The Contractor also agrees to pay the Town all expenses, including attorney's fees, incurred to enforce this Responsibility for Damage Claim clause.

Nothing in the **INSURANCE PROVISIONS of the General Conditions** shall limit the Contractor's responsibility for payment of claims, liabilities, damages, fines, penalties, and costs resulting from its performance or nonperformance under the Contract.

STATUS OF CONTRACTOR. Contractor has completed the Affidavit of Independent Contractor Status, attached as *Exhibit 3*, and submitted same at the time of execution of this Agreement. The Contractor is performing all work under the Contract as an independent Contractor and not as an agent or employee of the Town. No employee or official of the Town will supervise the Contractor. The Contractor will not supervise any employee or official of the Town. The Contractor shall not represent that it is an employee or agent of the Town in any capacity. **The Contractor and its employees are not entitled to Town Workers' Compensation benefits and are solely responsible for federal and state income tax on money earned.** This is not an exclusive contract.

THIRD PARTY BENEFICIARIES. None of the terms or conditions in the Contract shall give or allow any claim, benefit, or right of action by any third person not a party to the Contract. Any person, except the Town or the Contractor, receiving services or benefits under the Contract is an incidental beneficiary only.

INTEGRATION. This contract integrates the entire understanding of the parties with respect to the matters set forth. No representations, agreements, covenants, warranties, or certifications,



express or implied, shall exist as between the parties, except as specifically set forth in this Contract.

DEFINITIONS. The Definitions in the General Conditions apply to the entire Contract unless modified within a Contract Document.

Executed this _____ day of _____, 20__.

ATTEST:

TOWN OF CASTLE ROCK

Lisa Anderson, Town Clerk

Jason Gray, Mayor

APPROVED AS TO FORM:

Michael J. Hyman, Town Attorney

CONTRACTOR:

SCHMIDT CONSTRUCTION COMPANY

By: _____

Title: _____



EXHIBIT 1

CONTRACTOR'S BID

Description of the Work

General Description - The work to be performed under this contract includes removal and replacement of existing concrete including concrete pavement, crossspan, sidewalk, curb and gutter, curb ramps, asphalt patching, various depths and types of milling of existing asphalt pavement, and various thicknesses of asphalt paving within the streets listed in the Appendices or as directed by the Project Manager. The Contractor shall supply all labor, equipment, and materials necessary to complete the work in accordance with these specifications. The contract shall be awarded based on bids received for the base bid schedule A and the contract documents. **Night work shall be required and entail asphalt patching, asphalt milling, and asphalt overlay on 4th Street, between UPRR and Elbert Street, and 2nd Street between UPRR and Perry Street, as indicated in the maps. Work shall begin June 20, 2023 and be completed before July 21, 2023.** Contractor will be required to coordinate construction activities with adjacent businesses, trash removal companies, school district, HOA, Metro Districts, and other Town maintenance projects if applicable. The contractor shall commence work no later than three (3) calendar days from, and including, the date of the Notice to Proceed, and be construction complete (punchlist items, cleanup, and demobilize) within one hundred and sixty (160) working days from the date on the Notice to Proceed. If "Construction Completion" is not issued within the allotted contract time for the original scope of work, "Liquidated Damages" shall be assessed. When contract work is complete, the contractor shall commence work on punchlist items, cleanup, and demobilizing regardless of contract time remaining. Work shall take place between April 3, 2023 and November 3, 2023. A schedule of sequencing of all work shall be submitted at or before the project pre-construction meeting, and approved by the Town prior to issuance of Notice to Proceed.

Project Specials for the Asphalt Overlay bid book

Proj.Sec105 No open excavation
Proj.Sec107 Public Notification
~~Proj.Sec109 Asphalt Cement cost Adjustment~~
Proj.Sec202 Temporary Pavement Marking
Proj.Sec627 Pavement Marking
Proj.Sec627 Performed Thermoplastic
~~Proj.Sec403 Asphalt Fibers~~

**2023 Asphalt Overlay Project
BID SCHEDULE**

ITEM	DESCRIPTION	UNIT	QUANTITY	UNIT COST	TOTAL COST
202A	ASPHALT PLANING (2.0")	SY	284,070	\$1.55	\$ 440,308.50
202B	ASPHALT PLANING (3.0") (MITCHELL STREET)	SY	23,292	\$2.15	\$ 50,077.80
202C	REMOVAL OF CURB AND GUTTER TYPE 2	LF	3,004	\$10.45	\$ 31,391.80
202D	REMOVAL OF CURB AND GUTTER & WALK	LF	4,917	\$16.25	\$ 79,901.25
202E	REMOVAL OF SIDEWALK	SY	874	\$18.30	\$ 15,994.20
202F	REMOVAL OF CURB RAMP	SY	4,434	\$20.15	\$ 89,345.10
202G	REMOVAL OF CONCRETE PAVEMENT	SY	453	\$30.55	\$ 13,839.15
203	UNCLASSIFIED EXCAVATION (CIP)(CONTINGENCY)	CY	150	\$77.90	\$ 11,685.00
210A	ADJUST MANHOLE (OVERLAY)	EA	75	\$166.00	\$ 12,450.00
210B	RESET MANHOLE (RESET MANHOLE RING AND ADJUST WITH RISER RINGS)(CONTINGENCY)	EA	100	\$593.00	\$ 59,300.00
210C	ADJUST VALVE BOX (OVERLAY)	EA	150	\$98.60	\$ 14,790.00
210D	REPLACE VALVE BOX (CONTINGENCY)	EA	50	\$371.00	\$ 18,550.00
210E	TYPE R INLET PAN (REMOVE AND REPLACE)	LF	19	\$79.40	\$ 1,508.60
210F	TYPE R INLET TOP (REPAIR)	SF	531	\$80.40	\$ 42,692.40
210G	CHASE DRAIN RESET	EA	3	\$1,221.00	\$ 3,663.00
304	AGGREGATE BASE COURSE (CLASS 6 RECYLCED COONCRETE)(CONTINGENCY)	CY	300	\$25.45	\$ 7,635.00
403A	HMA/WMA (LEVELING) (GR SX)(CONTINGENCY)	TON	20	\$162.00	\$ 3,240.00
403B	HMA/WMA (PATCHING) (GR S) (6") (PG 64-22)(75)(CIP)	TON	4,100	\$148.00	\$ 606,800.00
403C	HMA/WMA (2.0") (GR SX) (PG 58-28)(75)	SY	284,070	\$10.55	\$ 2,996,938.50
403D	HMA/WMA (3.0") (GR SX) (PG 58-28)(75) (MITCHELL STREET)	SY	23,292	\$15.45	\$ 359,861.40
412	CONCRETE PAVEMENT (10") (CROSSPAN) (HIGH EARLY)	SY	453	\$122.00	\$ 55,266.00
608A	CONCRETE SIDEWALK (6")	SY	874	\$71.25	\$ 62,272.50
608B	MOUNTABLE CURB CORNER RAMP (ADA) (CAST IRON)	SY	3,671	\$102.00	\$ 374,442.00
608C	MOUNTABLE CURB MID-BLOCK RAMP (ADA) (CAST IRON)	SY	763	\$102.00	\$ 77,826.00
609A	CURB AND GUTTER TYPE 2 (SECTION II-B)	LF	2,814	\$34.60	\$ 97,364.40
609B	CURB AND GUTTER TYPE 2 (SECTION II-M)	LF	190	\$34.60	\$ 6,574.00
609C	MOUNTABLE CURB, GUTTER AND SIDEWALK 6' 6"	LF	3,748	\$68.20	\$ 255,613.60
609D	MOUNTABLE CURB, GUTTER AND SIDEWALK 7' 11"	LF	1,169	\$80.40	\$ 93,987.60
620	SANITARY FACILITY	LS	1	\$2,272.00	\$ 2,272.00
626	MOBILIZATION	LS	1	\$144,000.00	\$ 144,000.00
627A	PAVEMENT MARKINGS (PAINT)(6" White)	SF	2,700	\$0.80	\$ 2,160.00
627B	PAVEMENT MARKINGS (PAINT)(4" Double Yellow)	SF	7,000	\$0.80	\$ 5,600.00
627C	PAVEMENT MARKINGS (PAINT)(XWALK/STOPBARS)	SF	5,600	\$0.80	\$ 4,480.00
627D	PAVEMENT MARKINGS (SYMBOLS)(PREFORMED THERMOPLASTIC)	SF	300	\$22.20	\$ 6,660.00
627E	PAVEMENT MARKINGS (XWALK/STOPBAR)(PREFORMED THERMOPLASTIC)	SF	650	\$13.15	\$ 8,547.50
629	SURVEY MONUMENT RESET	EA	10	\$595.00	\$ 5,950.00
630A	TRAFFIC CONTROL MANAGEMENT	LS	1	\$175,479.00	\$ 175,479.00
630B	VARIABLE MESSAGE SIGN (2 VMS PER DAY)	DY	210	\$136.35	\$ 28,633.50
720	MATERIALS SAMPLING & TESTING	LS	1	\$58,738.00	\$ 58,738.00
F/A	MINOR CONTRACT REVISIONS	LS	1	\$ 929,500.00	\$ 929,500.00

TOTAL PROJECT COST: \$7,255,337.80

TOTAL PROJECT COST IN WORDS: Seven Million, Two Hundred Fifty-Five Thousand, Three Hundred Thirty-Seven and 80/100

EXHIBIT 2

CONTRACTOR'S CERTIFICATE OF INSURANCE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

2/6/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Hylant - Detroit 2401 W. Big Beaver Rd. Ste 400 Troy MI 48084	CONTACT NAME: PHONE (A/C, No. Ext): 248-643-8750 FAX (A/C, No): E-MAIL ADDRESS: susan.thompson@hylant.com
INSURED Schmidt Construction Co. 2635 Delta Drive Colorado Springs, CO 80910	INSURER(S) AFFORDING COVERAGE INSURER A: Old Republic Insurance Company INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:

COVERAGES**CERTIFICATE NUMBER:** 1844427396**REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> Broad Form P.D. GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:	Y		MWZY31417522	10/1/2022	10/1/2023	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 0 PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 10,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000 Project Aggregate \$ 5,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			MWTB31417322	10/1/2022	10/1/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	<input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
A	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A	MWXS31417422	10/1/2022	10/1/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: 2023 Asphalt Overlay

The Town, its officers and employees are additional insured with respect to general liability where required by written contract or agreement.

CERTIFICATE HOLDER**CANCELLATION**Town of Castle Rock
Attn: Public Works Department
4175 Castleton Court
Castle Rock CO 80109

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Nicholas R. Hylant

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EXHIBIT 3

TOWN OF CASTLE ROCK AFFIDAVIT OF INDEPENDENT CONTRACTOR STATUS

I, _____, an authorized representative of **Schmidt Construction Company**, holding legal authority to sign this Affidavit declare under oath that I am 18 years or older and have the capacity to sign this Affidavit.

In accordance with Section 8-70-115, C.R.S., I certify the following:

- With respect to the Agreement, **Schmidt Construction Company** represents and warrants that it is its express intention to be employed as an independent contractor of the Town of Castle Rock (the “Town”) for purposes of performing the work or services which are the subject of the Agreement. **Schmidt Construction Company** understands and confirms that the Town reasonably relied on this intention in entering into the Agreement.
- The Town does not require **Schmidt Construction Company** work exclusively for the Town, except that **Schmidt Construction Company** may choose to work exclusively for the Town for a finite period of time specified in the document.
- The Town does not establish a quality standard for the work or services performed pursuant to the Agreement, except that the Town may provide plans and specifications regarding the work but cannot oversee the actual work or provide instruction as to how the work is performed.
- The Town does not pay a salary or hourly rate but rather a fixed or contract rate, as noted in the terms and conditions of the Agreement, and any Exhibits made part of the Agreement.
- The Town cannot terminate the work or services performed during the contract period unless otherwise agreed to in the terms and conditions of the Agreement.
- **Schmidt Construction Company** is not provided with anything, if at all, more than minimal training from the Town.
- The Town does not provide **Schmidt Construction Company** with tools or benefits for the performance of the work or services which are the subject of the Agreement, except materials and equipment may be supplied.
- The Town does not dictate the time of performance, except that a completion schedule and a range of mutually agreeable work hours may be established in the Agreement.
- The Town issues checks payable to **Schmidt Construction Company** a party to the Agreement; and the Town does not combine their business operations in any way with the **Schmidt Construction Company’s** business, but instead maintains such operations as separate and distinct.



- **Schmidt Construction Company** understands that if a professional license to practice a particular occupation under the laws of the State of Colorado requires the exercise of a supervisory function with regard to the work of services performed under this Agreement, such supervisory role shall not affect the independent contractor relationship with the Town.
- **SCHMIDT CONSTRUCTION COMPANY UNDERSTANDS THAT NEITHER SCHMIDT CONSTRUCTION COMPANY NOR ITS EMPLOYEES ARE ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS OF THE TOWN.**
- **SCHMIDT CONSTRUCTION COMPANY UNDERSTANDS THAT IT IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON MONEYS PAID PURSUANT TO THE AGREEMENT.**

CONTRACTOR:

SCHMIDT CONSTRUCTION COMPANY

By: _____

Name

STATE OF COLORADO)

) ss.

COUNTY OF _____)

The foregoing instrument as acknowledged before me this ____ day of _____,
20__ by _____ as _____ of the above mentioned Contractor.

Witness my official hand and seal.

My commission expires:

Notary Public